

AUSTRALIAN LAW STUDENTS' ASSOCIATION



**SUBMISSION ON HIGHER EDUCATION FUNDING
(1998)**

Executive Summary

There is a crisis in Australian law schools. The 1996 cuts to Higher Education funding has impaired the quality of legal education provided in Australia. This policy addresses the issues most important to the future of legal education and the legal profession.

Quality legal education is essential to orderly social and commercial interaction, and the functional operation of Australia's political and judicial institutions.

1) ALSA recommends that Government funding be increased in recognition of the public value inherent in legal education.

Australian law schools are currently underfunded. Funding cuts are crippling the quality of legal education.

2) ALSA recommends that any reform of higher education must include increased funding.

The placement of law in the lowest cluster of the Relative Funding Model (RFM) has had a detrimental effect. Unless law is placed at a higher level in the RFM, law schools will not be able to provide sufficient library, technological or human resources.

3) ALSA recommends that law be placed in a higher cluster of the RFM and that the RFM be regularly reviewed to ensure funding levels reflect the cost of providing legal education.

The placement of law in the highest band of differential HECS is flawed because a) law graduates do not earn higher salaries than other disciplines in the same band, b) law is in the lowest RFM cluster, and c) it has serious implications for access to, and the profile of, the legal profession.

4) ALSA recommends that differential HECS be abolished.

Law students must undertake some form of pre-admission training to gain accreditation. In all cases, the cost of Practical Legal Training (PLT) is increasingly being shifted onto the graduate.

5) ALSA recommends that PLT be classified as 'undergraduate' and be HECS liable to ensure there is fair access to the legal profession.

The rationale of the West Report's recommendations to deregulate tuition fees and introduce 'student centred' funding are based on false assumptions.

6) ALSA rejects recommendations to deregulate higher education.

ALSA is opposed to full up-front fees for Australian students in publicly funded institutions. Full fees have serious ramifications for access to higher education and will adversely effect new, small and regional law faculties.

7) ALSA recommends a deferred HECS scheme as the most appropriate means of financing higher education.

Chapter Summary

Chapter 1: The Role of Legal Education

Legal education has a specific role to play in serving community demand as orderly social and commercial interaction depend upon a well developed legal infrastructure and respect for the rule of law. Thus, the public value inherent in legal education justifies a strong subsidy of legal education.

There should be a fair balance between private and public contributions to higher education should be fair across all courses. Accordingly, law should be moved to a higher cluster on the Relative Funding Model to provide a level of funding that is consistent with the:

- need to provide diverse and innovative teaching in the form of small group teaching and integration of practical skills into the undergraduate curriculum;
- demands from the profession for high quality professional legal education; and
- the placement of law in the highest band of the differential HECS scheme.

The public value inherent in legal education justifies a strong subsidy of legal education.

Chapter 2: The Funding Crisis in Law Schools

Australian law schools are currently underfunded. Any reform of the higher education

sector must take account of this.

The detrimental effects of funding cuts are apparent across all areas of legal education including class sizes, impact on innovative and small group teaching, contact hours, lecturers and staffing, quality of assessment, student support resources, libraries and administrative support.

Because of the funding crisis, the important role of legal education is being undermined.

Chapter 3: The Relative Funding Model

The placement of law in the lowest cluster of the Relative Funding Model has reduced the quality of legal education in Australian law schools.

Law should be placed at a higher level in the Relative Funding Model because the model no longer reflects teaching practices in legal education. To ensure that law schools can maintain or implement small group and innovative teaching methods, and respond to technological change, it is imperative that funding be increased.

ALSA submits that there must be periodic review of funding levels so that public funding is responsive to changes in the costs of providing legal education and the manner in which it is provided.

Chapter 4: Differential Higher Education Contribution Scheme

The placement of law in the highest band of differential HECS is flawed because:

- Law is placed in the lowest band of public funding.
- Law students pay 80.5% of their course costs. This is almost three times higher than the other courses in the highest band (medicine, dentistry and veterinary science).
- Contrary to public perception, empirical studies demonstrate that most law graduates do not earn large salaries.
- Demand for courses should not be a basis for determining HECS charges. However, if it is endorsed as an appropriate basis, it should be recognised that the demand for law courses is comparable to those courses in the lower HECS bands.
- The undergraduate law degree does not qualify graduates to practice unlike the other courses in band three. Most law graduates must undertake additional study to gain

admission into the profession.

- It has had serious implications for students' access to the legal profession and in the medium term will have a drastic impact on the profile of the profession in Australia.

Chapter 5: Practical Legal Training for Admission to Practice

Law students must undertake some form of pre-admission training in order to gain accreditation to practice law. For most law graduates this entails undertaking expensive pre-admission training courses (Practical Legal Training). In all cases this cost is shifted onto the graduate. Therefore, PLT should be classified as 'undergraduate' and be HECS liable to ensure there is fair access to the legal profession.

Funding for practical training should be flexible to take account of the reality that there will be diversity in the foreseeable future in the provision of pre-admission training.

Chapter 6: Deregulation of Student Fees and Student Centred Funding

Deregulation of tuition fees and student centred funding as proposed by the West report should be rejected because it is based on the false assumptions that it will improve the quality of education, increase efficiency, competition and responsiveness of universities to student needs.

Whilst ALSA strongly opposes deregulation, if such a policy is implemented, ALSA submits that safeguards will need to be introduced to ensure continued quality of legal education and to maintain access to that education. The safeguards proposed by ALSA would include:

- the creation of a national regulatory body;
- caps of tuition fees;
- full disclosure of information;
- the learning account set at a sufficient level; and
- the establishment of a Higher Education Ombudsman.

Chapter 7: Full Fee Paying Domestic Students

ALSA is opposed to the introduction of full up-front fees for Australian students as:

- it has negative implications for access to higher education (as has been demonstrated by the American higher education system which strongly emphasises the ability to meet course costs over the merits of students);
- it will adversely affect newly established, smaller and regional law faculties which are unable to attract full-fee paying students;

Furthermore, ALSA submits that:

- a deferred HECS scheme is the most appropriate means of financing higher education;
- if full-fees are maintained, there must be a close nexus between the fees paid by full-fee paying students and those funds provided to law faculties.

Introduction

In 1996 the Federal Government introduced a series of radical changes to the funding of higher education in Australia. As part of those changes the Government announced a wide-ranging review of higher education financing and policy. The Higher Education Review Committee ("the West Committee") commenced work at the beginning of 1997. The Committee invited submissions from the public, released an interim report ("the West Interim Report") on 12 November and delivered its final report ("the West Report") on 17 April 1998.

As the peak representative body for law students in Australia, the Australian Law Students' Association (ALSA) made a submission to the West Committee on 24 April addressing four major concerns of law students:

- the placement of law in cluster 1 of the Relative Funding Model;
- the flawed reasoning for the placement of law in band 3 of the differential HECS scheme;
- the current fee paying arrangements for practical legal training courses which are

required to practice in the legal profession; and
· the introduction of local full fee paying undergraduate students.

ALSA also submitted a response to the West Interim Report dated 19 December 1997 which addressed two main issues raised by the Report:

· tuition fee flexibility and student centred funding models; and
· information technology.

Both of these submissions to the West Committee can be found on the ALSA World Wide Web page: www.progsoc.uts.edu.au/alsa/

Chapter 1 : The Role of Legal Education

Recommendations and Submissions:

1.1) ALSA recommends that Government funding be increased in recognition of the public value inherent in legal education.

1.2) ALSA submits that a broad professional profile is imperative if all sectors of the community are to have access to quality legal advice.

1.3) ALSA submits that differential HECS, up front fees for PLT and full fees for domestic students promote an elite student profile to the detriment of students from disadvantaged socio-economic groups including rural students, indigenous students, students from a non-English speaking background and female students.

Conceptualisation of higher education in market terms fails to take account of important social and cultural educational priorities and may have a detrimental impact on the profile of the profession. Amongst other things, higher education must provide highly trained graduates to serve community demand. Legal education has a specific role to play in serving community demand as orderly social and commercial interaction depend upon a well developed legal infrastructure and respect for the rule of law.

High quality legal education is necessary to ensure that law graduates operate effectively. The Law Council of Australia has stated that:

"to ensure the effective functioning of the legal system and the effective delivery of legal services, there must be a system of legal education which instils in the student:

- A good understanding of the rule of law;
- A good grounding in the knowledge of the law;
- An understanding of the role and nature of the profession in the administration of justice;
- A commitment to the highest ethical principles of the legal profession;
- A good grounding in the skills necessary to practise the law."

The Council goes on to say that the course of study should provide:

- A well rounded education in the law;
 - A level of scholarship usually associated with a course leading to an undergraduate degree;
 - A good grounding in the analytical, communication and other skills required of a lawyer in a modern society;
- and which places the theory in a practical context."

1.1 Access to Legal Education

Commitment to equity was one of the six major elements of policy announced in the 1996 Higher Education Budget Statement. The Statement contained several developments which would diminish equity of access to education programs and the profile of enrolments in entry level professional education courses. This was noted with concern by the Higher Education Council in its report to the Minister for Employment, Education, Training and Youth Affairs. Included in the budget statement was the introduction of differential HECS and provision for universities to charge up front fees for Australian undergraduate students. The report also acknowledges equity issues that arise from the imposition of up front fees on postgraduate courses which are required for admission into a profession, such as practical legal training.

These developments promote an elite student profile to the detriment of students from disadvantaged socio-economic groups including rural students, indigenous students, students from a non-English speaking background and female students. A broad professional profile is imperative if all sectors of the community are to have access to quality legal advice.

1.2 Balance between Public and Private Contributions to Legal Education

Under the present system of higher education funding the government provides funding, allocated primarily according to the Relative Funding Model, whilst students provide private contributions to higher education through the differential higher education contribution scheme (HECS).

The balance between private and public contribution to funding of law courses should reflect the benefit to society of a well trained and efficient legal system. It is not just individuals who benefit from the study of law. The contribution to society which higher education makes is evidenced in economic growth founded upon certainty in the market place and an orderly society. However, a functional society is dependant upon a well developed legal infrastructure and respect for the rule of law. Indeed some degree of legal literacy is arguably vital for all citizens. In other words, legal education, whatever private value it has to law graduates, can and should be treated as a public good.

Encouraging a legal profession that is representative of a broad cross section of the community can only enhance the extent to which the legal profession can be responsive to all sectors of the community. The balance between private and public contributions to the cost of legal education should reflect the public benefit. At this stage the private contribution of law students is 80.4% of their course costs based on the placement of law in band 1 of the Relative Funding Model and band 3 of differential HECS. This is on average 50% more than the contribution of most other students. Accordingly attention must be turned to reform of the Relative Funding Model (the different levels of government funding for different courses) and differential HECS (the levels of private contribution required of students).

Chapter 2 : The Funding Crisis in Law Schools

Recommendations and Submissions:

2.1) ALSA recommends that any reform of higher education must include increased funding.

2.2) ALSA submits that the current lack of funding has resulted in increased class sizes, reduced student - lecturer contact hours, impaired innovative and small group teaching, cuts to lecturer positions, sacrificed quality assessment, depleted student support resources, savaged library resources, and cuts to administrative and support staff.

Law schools in Australia are facing a funding crisis. Resources for teaching, research and administrative support are at extremely low levels. This threat to legal education is largely a result of the placement of law in cluster one of the Relative Funding Model which fails to take account of the increasing costs associated with quality legal education.

The ability of Australian Law Schools to provide comprehensive and effective legal education is under threat. Massive funding cuts have forced Law Faculties to narrow radically the range of optional subjects offered and increase class sizes. Resources are too sparse to promote the development of innovative teaching methods. Adequate research and library facilities are not being provided. Student support services have been reduced or removed altogether. Most alarmingly, funding cuts have forced law schools to compromise course quality by engaging in cost cutting measures and taking on increased administrative duties.

Australian law schools have historically been under-funded, and this situation is worsening. Any reform of the higher education sector must take account of this.

2.1 Effects of Funding Cuts on Legal Education

The detrimental effects of funding cuts are patent across all areas of legal education. The following list details some of the effects in certain areas that funding cuts have had on Australian law schools since 1996:

2.1.1 Class Sizes

- Institutions have been forced to increase tutorial class sizes, some by as much as double;
- tutorials at some institutions have been abolished; and
- tutorials at some institutions are no longer available after first year.

2.1.2 Contact Hours

- The number of subjects required to gain a Bachelor of Laws have been reduced;
- full year courses have been reduced into semester-long courses to accommodate resource shortages; and
- the range and number of optional subjects have been drastically reduced.

2.1.3 Innovative and Small Group Teaching

- Institutions established with a focus on the provision of student centred learning and small group teaching have been forced to replace small group teaching systems with large lectures;
- some institutions have delayed or abandoned proposed moves to small group teaching because of insufficient funding to employ the necessary teaching staff;
- skills courses have been reduced, and in some cases abolished;
- research and learning centres related to the study of law have been closed or scaled down; and
- up-front fees have been introduced for some Practical Legal Training Courses (PLT).
- funding cuts have stifled innovative attempts to incorporate such courses within the undergraduate law degree.

2.1.4 Lecturers and Staffing

- General and specialist teaching staff has been cut, offered voluntary redundancy or not replaced after positions are vacated;
- new appointment of teaching staff have been frozen has been slowed or frozen

entirely, pending the availability of further resources;

- institutions have been forced to employ less qualified teaching staff as a cost-cutting measure; and
- legal practitioners are being used in place of lecturers to teach certain courses.

2.1.5 Quality of Assessment

- Budget cuts have resulted in shifting the focus of assessment from the individual to group tasks which reduces the accuracy and equity of the assessment process;
- reduction or loss of essay options; and
- some institutions have been forced to move to less resource intensive, more inflexible forms of assessment, such as 100% examination.

2.1.6 Student support resources

- Law students' societies who traditionally receive faculty funding are receiving less and some none at all;
- some institutions have no computing facilities available for use by law students; others have limited or minimal access to computing facilities;
- law students' societies are losing office spaces formerly provided by the law faculty; and
- student common rooms are no longer available at some institutions.

2.1.7 Libraries

- Book budgets have been frozen or reduced;
- specialist law libraries are being absorbed within general library facilities. This has led to loss of specialist law library staff, access to legal information technology resources, group meeting tables and rooms;
- the number of journals and serials subscribed to by most libraries is declining every year. This is due to a combination of rising costs of such literature and a reduction in funding available; and
- reduced library opening hours.

2.1.8 Administrative Support

- Administrative duties are being transferred to academics as support staff are removed

from law faculties. Quality of research is suffering as a result;

- law schools are being absorbed into other large departments, having serious implications for diversity, innovation, curriculum development, identity and student participation within the faculty;
- some faculties are being forced to use other faculties resources;
- faculty office hours are being reduced;
- reduction in the number of hours that students can collect exams; and
- restructuring of the law degree (with retrospective effect) to accommodate budgetary pressures.

Chapter 3 : The Relative Funding Model

Recommendations and Submissions:

3.1) ALSA recommends that law be placed in a higher cluster in the RFM and that the RFM be regularly reviewed to ensure funding levels reflect the cost of providing legal education.

3.2) ALSA submits that it is inconsistent and unfair to fund legal education at the lowest rate of the RFM and demand fees at the highest level of differential HECS.

3.3) ALSA submits that the RFM must be consistent with the need to provide diverse and innovative teaching, small group teaching, and the integration of practical skills into the undergraduate curriculum.

3.4) ALSA submits that the RFM must allow law schools to provide technological resources necessary to take advantage of developments in computer and information technology.

3.5) ALSA recommends that law be placed in a higher RFM cluster in order to the legal profession's demand for high quality legal education.

In 1991 the Commonwealth Government introduced the Relative Funding Model (RFM) for higher education. Under this model each discipline was grouped into one of five clusters for the purposes of a one off system-wide operating grant to institutions from the government. Law has remained in the lowest cluster of the RFM since it was introduced.

The quality of legal education is being undermined by the placement of undergraduate and postgraduate law courses in the lowest cluster of the RFM. Law was placed within this band on the basis of unrepresentative surveying of traditional law schools (such as Melbourne University) which delivered their degrees at minimal cost due to large-group teaching, inflexible (predominantly single exam) assessment and some reliance on unpaid professionals rather than paid academics for teaching.

The placement of law in the lowest cluster of the RFM has had an adverse impact on many institutions. Although the RFM is used to distribute government funding to universities, each university is free to distribute their funding amongst their respective faculties however it chooses. Although the RFM was designed as a guide, most universities have relied heavily on it for internal distribution of funds. In response to the implementation of the RFM, the Deans of the law schools in New South Wales issued a statement expressing concern that the formulae proposed for funding legal education would result in a reduction of resources available for legal education.

According to the 1987 Pearce Report on Australian law schools, law was the most poorly resourced of all disciplines. The Pearce Report was a major review of the then 12 university-based law courses. The review was commissioned by the Commonwealth Government and released in 1987. Despite the recommendations of this report there has been an actual decline of per capita Commonwealth funding which affected all disciplines at universities, and created an environment in which qualitative improvements in resourcing were very difficult to achieve.

The recommendations of the Pearce Report rejected traditional 'chalk and talk' teaching methods and urged the adoption of innovative teaching. This included the introduction of small-group teaching, reducing class sizes generally, greater non-teaching contact with

lecturers, continuous assessment of student work, flexible assessment and the introduction of clinical education and practical training. Since then law schools have struggled to implement these recommendations due to the underfunding of law.

The West report recommends periodic reviews of the level of public funding to take account of movements in costs of different degree courses. ALSA supports periodic review of funding models in order to equate funding with the actual cost of providing quality higher education. This would encourage innovation and differentiation and avoid the funding problems law courses are encountering. Review of law school funding must commence at the government level as present practice indicates universities will not re-allocate to law schools funds provided to them when the Commonwealth's own funding formula rates law as the lowest cost discipline.

ALSA realises governments will need to continue providing funding in broad categories (e.g. clusters). However, ALSA expresses concern at the proposals of the West Report to re-organise course funding into three broad categories (basic, laboratory and clinical). There is a danger that such a simple categorisation of courses based on broad divisions according to traditional teaching methods is too blunt a funding tool and therefore will be an inefficient means of distributing funding. ALSA recommends a discipline-based funding model as is presently operating, but which is far more responsive to the changing costs of delivering quality legal education.

3.1 The Changing Face of Legal Education

Today the quality of legal education is dependent upon whether law schools receive the necessary level of funding to enable them to implement the most effective professional teaching methods. These teaching methods require investment in intensive tuition (and therefore low student/staff ratios) and the increased provision of technology.

Recognising the need for highly professional and intensive teaching, the legal profession has expressed concern about the inadequate funding of law schools and the implications this has for the quality of legal education. There is a commitment to innovation and practical skills in legal education, the only inhibiting factor is the funding crisis facing law

schools. In a submission to the Higher Education Council the Law Council of Australia in 1992 stated that:

"a good law degree can no longer be seen as a cheap commodity. Staff need to be attracted, libraries need to be developed, skills inculcated. This cannot be done at an adequate level if law schools continue to be funded on a cluster 1 basis.

The placing of law in cluster 1 is based on historical cost factors associated with outmoded, traditional styles of teaching which proceed from the assumption (which, if it was ever correct, is no longer tenable) that skills can be super added to theory after graduation. It does not recognise that modern teaching methods and needs in the law schools, and the demands of practitioners, require 'small group teaching' as well as more library and computer resources, simulation exercises involving interpersonal skills (negotiation, mediation) and clinical programs."

3.2 New Teaching Methods

Law faculties have had to absorb the increased cost of introducing more effective teaching methods in their attempt to provide quality legal education in line with the recommendations of the Pearce Report. There can be no doubt that seminar-style presentation of legal material in small groups is a far more effective method for teaching than lectures with 300 students and one lecturer. However, when the Relative Funding Model was conceived, it evaluated the cost of delivering a law course on auditorium/lecture based law schools which were prevalent in 1990. The Pearce Report actually concluded that auditorium based law schools such as Melbourne University had a staff-student ratio which was considered to be very poor.

Law schools need to provide students with a good grounding in the analytical, communication and practical skills which is required to be a lawyer in a modern society and which places theory learnt in a practical context. It is very clear that law schools must provide practical skills such as legal writing and drafting, legal research and computer retrieval, negotiation, mediation, advocacy and a clinical training program if they are to be able to offer a quality legal education in today's market place.

However, attempts to move to more effective teaching methods has been hampered by the Commonwealth and universities adhering to the RFM when allocating funds. Due to these budgetary constraints law schools have been unable to hire the additional teachers to take small group classes and teach the relevant practical components, nor afford the extra resources required to teach these practical skills.

The inadequate funding of law schools creates problems for schools trying to provide new, diverse and innovative ways of teaching. As outlined above, law schools will be unable to provide small group teaching and innovative integration of practical skills unless the necessary funds are made available.

3.3 Cost of Libraries

Law students do not need labs, scapulas, chemicals or other expensive equipment. However, they depend heavily on their law library and require regular access to the most up to date legal information and data bases throughout their law degree

Legal text books, legal periodicals and legislation are among the most expensive publications purchased by libraries. The level of funding provided by Universities to law libraries is not sufficient to maintain a minimum standard for legal education. The cost of maintaining a law library is increasing at a rapid rate with Parliament and the courts passing or interpreting more law than ever before. Common law and statute is changing so rapidly that libraries have to move to more expensive publications like CD-ROMs and provide students with open access to use of the internet just to remain up-to-date.

3.4 Technological Change

Organisational change in universities should provide flexibility in teaching and learning and train lawyers to meet social, cultural and economic changes. It is important that universities are equipped with the resources which take account of technological change. It is generally accepted that innovative teaching methods involving a greater use of technology such as computers and the internet should be encouraged.

In order for law schools to be able to utilise and adapt to technological changes, there must be funds provided to update present resources and to provide the new technology

which is required, particularly in law libraries. This necessitates re-consideration of the funding of legal education according to the Relative Funding Model. The problems associated with the current funding of universities by DEETYA at a rate of 1.0 according to the RFM are outlined in detail above.

Chapter 4 : Differential H.E.C.S.

Recommendations and Submissions:

- 4.1) ALSA recommends that differential HECS be abolished.
- 4.2) ALSA submits that law students should not be required to pay 80.5% of their course costs.
- 4.3) ALSA submits that it is inequitable to fund law at the lowest level under the RFM and place it in the highest tier of differential HECS, particularly when it is the only discipline in band 3 which does not qualify a graduate to practice.
- 4.5) ALSA recommends that investment in the intellectual capital of the work force should be encouraged not discouraged by the imposition of high HECS charges.
- 4.6) ALSA submits that setting HECS with respect to expected high future earnings is flawed because the perception that law graduates earn disproportionately large salaries is incorrect.
- 4.7) ALSA submits that demand for courses should not be a basis for determining HECS charges.
- 4.8) ALSA submits that the placement of law in band 3 of differential HECS has serious implications for equity and access to the legal profession which will have a drastic impact on the profile of the legal profession in Australia.

The level of private contribution to the provision of legal education is determined under the Higher Education Contribution Scheme (HECS). HECS is the mechanism

established by the Commonwealth government to determine the amount students contribute to their education. The amount contributed by students used to be based on the number of subjects enrolled in. However, differential HECS was introduced in the 1996 Higher Education Budget Statement. Differential HECS distinguishes how much each student must contribute based upon the course they enrol in, rather than on the number of subjects they do. Undergraduate degrees have been bracketed into three cost categories with law being placed in the highest cost category of \$5500 per year for five years.

The Higher Education Funding Report for the 1997-1999 Triennium states that the LLB course was placed in band 3 according to the following criteria:

- actual cost of course undertaken;
- the likely future benefits to the individual; and
- student demand.

ALSA submits that Differential HECS is inappropriate, particularly with respect to the LLB course. The placement of the LLB course in the highest bracket of differential HECS is inequitable and founded upon misconceived assumptions, as outlined below.

4.1 Actual Cost of Course Undertaken

One of the reasons given for adopting the above criterion to determine which bracket of differential HECS each course would be placed in was the fact that, on average, the HECS charge (as it was in 1996) represented about 23% of the costs of a higher education course, but that the proportion of the actual course cost varied between 36% for Arts down to 13% for medicine.

The introduction of differential HECS only exacerbated this problem for law. By placing law in band 3 of the differential HECS model, law students are now paying 80.5% of their course costs. Of the four courses in the highest bracket (\$5500 per annum), the LLB course is funded at the lowest level on the assumption that the cost of course delivery are the lowest. In terms of the RFM, law is placed in cluster 1 with a relative weight of 1.0 while medicine, dentistry and veterinary science are placed at the top of the scale in cluster 5 with a relative weight of 2.7. As outlined in Chapter 3, it is on this basis that the level of government funding provided to the universities for legal education is allocated.

Figure 4.1 highlights the LLB course's significantly lower level of public funding. The figures used were provided by DEETYA and are the estimates of the cost of providing the four disciplines of study based on an estimate of the Commonwealth funding rate for each discipline in 1997. The funding rates were derived by DEETYA using the Relative Funding Model.

The assumption is that studies in law require significantly less clinical equipment and resources than medicine, dentistry and veterinary science, thus making it a cheaper course to run. However, the perception of law as a cheap course to run, based upon traditional lecture based law courses, has resulted in universities exploiting law courses as a means of gaining enrolments, and consequently gaining further funding for a relatively small outlay. This threatens the quality of legal education and inevitably the quality of the legal profession.

4.1.1 Disparity Between Contribution and Funding

Course	HECS payment	Relative Funding Model	Course cost per annum	Contribution
Education	\$3,300	Cluster 2	\$8,809	37.5%
Nursing	\$3,300	Cluster 3	\$10,367	31.8%
Science	\$4,700	Cluster 4	\$14,975	31.4%
Agriculture	\$4,700	Cluster 5	\$18,096	26.0%
Engineering	\$4,700	Cluster 4	\$14,975	31.4%
Law	\$5,500	Cluster 1	\$6,836	80.5%
Medicine	\$5,500	Cluster 5	\$18,096	30.4%

Table 4.1 The proportion of cost contributed by students in various discipline groups.

As outlined above, law students are now required to pay 80.5% of the cost of their higher education. As is evident from table 4.1, this figure is extremely inequitable when compared with the contribution made by students in other courses. The logic of differential HECS is questionable given the placement of law in the top HECS bracket and, at the same time, in the bottom funding cluster. ALSA submits that law students should not be funding their own course in such a disproportionate manner to students in other courses.

This argument is compounded when the disparity between private contributions made in relation to overall course costs for courses in the top HECS bracket is compared. Figure 4.2 illustrates that law students pay a significantly higher proportion of their total course cost than students in the other disciplines placed in band 3 of differential HECS.

The disparity between private contribution and public funding in law courses is not proportional to every other degree course. If a compromise was reached whereby law was placed in Band 2 of Differential HECS, law students would nevertheless still be paying over 45% of their course costs (which is 50% more than most other students).

4.2 Likely Future Benefits in Terms of Increased Life-Time Earnings

The placement of the LLB course in the highest bracket of HECS appears to be based on the perception that law graduates salaries are high. Problems with this assumption are:

- According to a published table showing graduate starting salaries of 29 disciplines:
 - dentistry was 1st with \$42,000;
 - medicine was 2nd with \$40,000;
 - veterinary science was 8th with \$28,000; and
 - law was 26th with \$25,000.
- Perceptions of high salaries for law graduates are traditionally associated with lawyers in private practice. Studies have shown that only 46.5% of law students have intentions of entering the work force in private legal practice.
- As outlined below, even within the realms of private practice there is evidence to suggest that there is considerable disparity between the salaries of law graduates in different areas of legal practice.

Although it is argued that lawyer's have a high mean salary on the basis of Australian Bureau of Statistics data, evidence from more recent studies suggests that large profits are not a widespread phenomenon across the legal industry. In fact, there is considerable disparity and range of salaries among law graduates, with only a small minority of legal businesses making very large profits while the majority are not.

The significantly high earnings of the minority distort the average salary figures that are given for legal practitioners. In fact, in most cases "lawyer's profits are not anything like what the popular view suggests." A large proportion of law graduates earn modest salaries, particularly female lawyers and those who work in country and suburban practices. This is illustrated in Table 4.2 which shows the results of a survey of median gross salaries in Victorian legal practices. It is apparent that the award wage and most of the salaries up until the graduate's fourth year out in the work force is lower than national average adult annual earnings of \$35, 724 gross.

Table 4.2 Median gross salaries paid in Victorian legal practices (June, 1995)

	Country	Suburban	Large CBD	Award wage
Articled clerks(1st year graduate)	\$16, 049	\$16, 302	\$26, 000	\$16, 042
1st year solicitor (2nd year graduate)	\$25, 500	\$26, 520	\$35, 000	\$23, 265
2nd year solicitor (3rd year graduate)	\$27, 725	\$30, 775	\$38, 867	\$26, 016
3rd year solicitor (4th year graduate)	\$38, 914	\$38, 017	\$45, 359	\$28, 756
Sole partner	\$30, 000	\$52, 000	\$89, 000	N/A

4.3 Demand for Course

The classification of HECS cost on the basis of demand is inconsistent with the commitment to equity of access to higher education. This criterion was not introduced in the Higher Education Budget Statement on 9 August 1996, but in fact is included in the Higher Education Funding Report for the 1997-99 Triennium.

Although it is not denied that there is a significant demand for law courses, the demand is not as disproportionately high as commonly perceived. Figure 4.3 illustrates the first preferences for courses at Western Australian Tertiary Institutions in 1997.

Figure 4.3 illustrates the demand for courses in lower HECS brackets, such as Arts, Information Technology and Engineering, is comparable or higher than that for law.

If the demand for law is considered to be high, it should be recognised that the study of law 'provides a liberal and general education', as the study of arts once was considered to do. Rather than viewing the situation as an oversupply of lawyers, it should be seen

as an investment in the intellectual capital of the work force by equipping graduates for a wide variety of careers.

4.4 Requirements for Practical Legal Training

The majority of law graduates incur up front fees for post-graduate practical legal training courses which are required for admission to practice. It appears this was not given appropriate weight when law was classified into the highest band of differential HECS.

According to a report issued by the Higher Education Council, it is possible in courses such as medicine, veterinary science, engineering, physiotherapy and computing to become qualified for practice taking only HECS-liable courses. On the other hand, most law graduates undertake the further training in order to enter professional practice in fee-paying postgraduate university programs, the average cost of which is significant. A student undertaking a 5 year LLB degree and a practical legal training course costing \$6,925 will have a debt of \$34,425 (plus Austudy supplement loans) before they even enter full time employment.

Law is the only discipline in the third and most expensive band of HECS in which a large proportion of graduates undertake pre-admission training in fee-paying postgraduate courses. The implication of practical legal training course fees on access to the legal profession are outlined in Chapter 4.

4.5 Access to Legal Education and Profile of Law Students

As outlined above, the Higher Education Council believes that differential HECS may have an effect on equity of access and profile of enrolments in entry level professional education courses. The Higher Education Council suggests that under the differential HECS system, students from poorer backgrounds are less likely to commit to debt and fewer will be able to afford to pay the charge up front than at present. It indicates that as a result, the profile of students enrolled in undergraduate entry level professional courses such as law, which has been placed in the highest HECS band, are likely to change because of the differential charges.

4.6 Practical difficulties between the "law" and "justice and legal studies" categories

The placement of justice and legal studies in the lowest HECS band, whilst law is in the highest HECS band is an anomaly. The application of this distinction is difficult to implement because justice and administration faculties and law schools will need to assign law-related units of study between "justice and legal studies" and "law".

Chapter 5 : Practical Legal Training

Recommendations and Submissions:

5.1) ALSA recommends that PLT be classified as 'undergraduate' and be HECS liable to ensure there is fair access to the legal profession.

5.2) ALSA submits that there should be diversity and flexibility within law schools in relation to the integration and provision of practical legal training requirements in higher education institutions.

It is the position of ALSA that Practical Legal Training (PLT) should be HECS liable. PLT providers around Australia, if they have not already done so, are scheduled to introduce up-front fees for all PLT courses in 1999. The claim that PLT should be classified as postgraduate education, thus not HECS liable, simply because it is undertaken by law students after graduating from their LLB creates an artificial distinction. In fact PLT is a necessary extrapolation of undergraduate law studies, which is a form of pre-admission training which must be completed if students are to practice as lawyers. PLT is a natural flow-on from undergraduate study and is often integrated within the undergraduate program; as is the case at UTS and University of Newcastle (Flinders University and the University of Western Sydney propose to introduce similar programs in the near future).

The Higher Education Council has stated that the review of higher education policy and funding should examine the issue of funding of professional education, including whether

or not professional education should be consolidated at the undergraduate level or exempt from fees.

ALSA submits that if PLT is to remain up-front fee paying, income contingent loans need to be made available in order to ensure graduating students have the means to undertake pre-admission training. ALSA agrees with the recommendation of the West Committee that a loan with repayment contingent on future income should be available to students undertaking courses which are prerequisites to professional accreditation.

5.1 Current Fee Paying Arrangements For PLT Creates Barriers to Entry to the Profession

The Higher Education Council believes that the higher education system should provide fair and equitable access to professional education courses up to the level of entry to the profession. It reports that many professional fields have significantly biased enrolment profiles in fee-paying postgraduate courses to the extent that there is under-representation from female students, indigenous students, students from rural and isolated areas and those from socio-economically disadvantaged backgrounds.

The imposition of up-front fees for PLT creates a barrier to entry to the legal profession for students from middle and lower socio-economic backgrounds. The charging of course fees, which are not able to be deferred has a clearly observable deterrent effect on enrolments from designated disadvantaged groups. This in turn will have consequences for the profile of the legal profession.

In a review of post-graduate fee-paying courses, the Stanley report found that the participation of students from low socio-economic backgrounds is lower for fee paying postgraduate courses than for non fee-paying post graduate courses. Data establishes that 52% of students from low socio-economic backgrounds are enrolled in HECS liable courses (deferring their HECS payments), while only 16% enrol in fee-paying courses.

If we specifically examine participation in fee-paying postgraduate courses, almost half the enrolments are from the highest socio-economic group, while only 8.5% are from the lowest group. This demonstrates that up-front fees for fee-paying postgraduate courses impacts on participation levels of students from lower socio-economic backgrounds.

Therefore, up-front fees also act as a disincentive for students from low socio-economic groups participating in professional accreditation training such as PLT courses. The demographic make-up of the students who enter PLT will invariably affect the profile of the profession.

Furthermore, in Australia men and women work in the legal profession, however males tend to occupy primary positions whereby women tend to occupy lower status and less financially rewarding positions in the profession. Any further deregulation or restrictions in the number of publicly funded postgraduate places will only reinforce the existing segregation of roles in the work force.

The Stanley Report identified that women are very much under-represented in fee paying postgraduate courses with the proportion of women enrolled being significantly lower than the proportion in non-fee paying courses. For example, in the first semester of 1994, over 54% of students enrolled in non-fee paying postgraduate courses were women. In comparison, women were less than 41% of students enrolled in fee-paying courses. The imposition of up front fees is therefore a major barrier to the participation of women in postgraduate courses.

5.2 Placement of Law in Band 3 of Differential HECS

The problems associated with the placement of law in Band 3 of Differential HECS are outlined in Chapter 3. Law is the only course in the highest band of differential HECS where students are required to incur a substantial up-front fee in order to satisfy professional accreditation requirements after completing undergraduate studies. Other courses in the highest HECS band, such as medicine, veterinary science and dentistry, does not require graduates to undertake any further self-funded training or accreditation before being able to practice in the relevant field. It is inequitable that law is the only discipline in band 3 of the differential HECS scheme that does not qualify a graduate for professional practice without incurring additional significant costs.

In recognition of this requirement for further training and expense, ALSA submits that law should be moved from the highest HECS band to either the first or second HECS band. Alternatively, PLT courses should be made HECS liable, or subject to some other form of income contingent loan. This would ensure equality of access to pre-admission training for law graduates from disadvantaged groups.

5.3 Provision for Income Contingent Loans In the Context of Deregulation

As outlined above, ALSA is opposed to up-front fees for PLT courses. However, if up-front fees for PLT are to continue, ALSA submits that income contingent loans must be made available. Income-contingent loans would ensure that disadvantaged students have access to the pre-admission training required to practice law. If the profile of the legal profession is to be representative of the community, barriers to entry to the profession such as up-front fees for pre-admission training must be removed. ALSA submits that this can be achieved by making the costs of such courses subject to income contingent loans.

ALSA supports the recommendation of the West Report that a loan with repayment contingent on future income should be available to students undertaking postgraduate courses that are prerequisites to professional accreditation.

5.4 Public Funding for PLT

The vast majority of PLT courses in Australia presently receive no public funding. These courses have been offered by both public and private institutions on either a cost recovery or profit basis. The Higher Education Council has noted that "the tendency in recent years to include entry level professional education in the range of fee-paying courses means that students in some disciplines have to make considerable contributions towards the cost of their own studies". Therefore, graduates who undertake PLT courses make a significantly larger private contribution to the cost of their education than other students. ALSA submits that public funds should be available to students undertaking entry level professional accreditation courses so that students across all disciplines make a comparable private contribution toward the cost of their education.

ALSA is opposed to the introduction of student-centred funding and the further deregulation of the higher education system. However, if student-centred funding is implemented, ALSA submits that a public contribution should be made to the cost of delivering PLT courses. Therefore, student "lifelong learning accounts" should be set at a sufficient level to cover a combined undergraduate law degree and the required pre-admission professional training.

Accordingly, it is the position of ALSA that PLT courses should be made HECS liable. Failing this, "lifelong learning accounts" should be set at a sufficient level to cover a graduate's PLT.

5.5 Diversity and Flexibility

ALSA supports diversity and flexibility in relation to the delivery of PLT. This includes PLT undertaken on graduation or integrated into an undergraduate degree program. It is the position of ALSA that integrated PLT programs remain HECS-liable and that they should remain funded through the undergraduate funding program. Any move to make the integrated PLT programs full-fee paying would inhibit participation by students from lower socio-economic backgrounds. Funding for the HECS deferral should be provided either out of the Government budget or by the professional bodies who require the practical legal training. Continued public funding of these programs ensures diversity and flexibility in the delivery of PLT.

Chapter 6 : Deregulation of Tuition Fees and Student Centred Funding

Recommendations and Submissions:

6.1) ALSA rejects recommendations to deregulate higher education.

6.2) ALSA submits that deregulation of tuition fees and the introduction of student centred funding will not achieve its desired objectives as it is based on false assumptions.

6.3) ALSA recommends that, if tuition fee deregulation was implemented, safeguards would need to be introduced to ensure the continued quality of legal education.

6.1 ALSA's Position on Deregulation

The premise of deregulation is that competition will drive down costs and improve efficiency. ALSA believes that there already exists a high degree of competition between law schools which has seen them endeavour to decrease delivery costs whilst maintaining and improving the quality of legal education.

The West Report notes that "public funding for tuition should be tied far more closely to students' choices and preferences than at present" and that "this can be effectively achieved only by building a direct financial relationship between higher education providers and students."

The Report further concedes that Commonwealth policy is already heading in a direction which offers greater recognition of student choice. In 1998 undergraduate funding was adjusted automatically for enrolments above and below Commonwealth determined undergraduate targets.

While ALSA agrees that universities need to be more responsive to student choices and preferences, ALSA disagrees that the sole means of achieving this is through a direct financial relationship between higher education providers and students.

6.2 Arguments in Favour of Deregulation are Premised on False Assumptions

The West Report bases its recommendations for the deregulation of tuition fees on the following premises:

- that it will increase competition between universities;
- that it will result in education becoming more responsive to student and industry needs;
- that all universities will be able to compete equally.

These premises are based on false presumptions, especially when applied to law schools.

6.2.1 The effect of Increased Competition between Law Schools

The large number of law institutions and faculties established in the last two decades

has already created an environment in which law schools must actively compete to attract the best students. As there is currently no substantial price competition between law schools, the main sphere of competition is in the provision of a quality legal education to serve the profession. Fee deregulation will not create an environment of greater competition in this sense. Rather fee deregulation will shift the basis of competition away from course quality and diversity to the dollar cost of delivery to students. Course quality will not be an obsolete means of distinguishing faculties, however the importance of competition based on course quality will be greatly diminished in favour of the cost of delivery to students. This will have a negative impact on the quality of legal education.

6.2.2 The effect of Deregulation on the Responsiveness of Law Schools to Student and Industry needs

Deregulation of tuition fees is not necessary to provide greater incentives for law faculties to differentiate course content and respond to student and industry needs. Large numbers of law faculties have been established in the last two decades ensuring that law schools differentiate and diversify course content according to student and industry demands in order to attract enrolments. Innovative teaching methods, such as clinical legal education and skills based teaching have been developed in response to market demands and law schools are constantly undertaking course reviews based on professional and student requirements.

An increased emphasis on competition based on dollar course cost will result in small and regional universities retaining less resources. They will simply be unable to demand the same fees as their older, larger competitors. Accordingly, they will not have the financial capacity to be flexible and responsive to student and industry needs, whilst maintaining competitive course costs. ALSA submits that the introduction of deregulation would defeat the very reason for its introduction.

6.2.3 The effect of Deregulation on Resource Allocation and Competitive Advantage of law

schools

Permitting the market to regulate university tuition fees assumes that all law faculties will be able to compete equally in the market place. However, the quality and level of law school resources and infrastructure are not standard across Australia.

Historically, larger established law schools have been the recipients of publicly funded grants. Such law schools also demand and receive considerable fees from postgraduate students, and donations from their alumni. The capacity of being able to build up resources, infrastructure and reputation over many decades subsidised by public grants has not been available to new and regional universities. Thus, new and regional law schools do not have the same quality resources, infrastructure or prestige as established law schools, resulting in an inequality in market position before deregulation even commences.

The competitive advantage experienced by the more established or popular universities will result in those universities being able to charge more for their degrees. This is due to there being greater demand by students who wish to enrol in law schools which have better resources and established prestige in the market.

The West Committee foresaw that "higher fees are more likely for more popular courses at more popular institutions". As law is a high demand course and the greatest demand will be for law schools in the best market position, it is not unreasonable to assume that law degrees at established universities will cost in excess of those at new or regional universities.

Thus, the impact of deregulated tuition fees would mean more established institutions would maintain high rates of income which can be directed into the development of the degree. Meanwhile newer and regional universities who have lower demand courses cannot charge the same rates as established universities. Accordingly, newer and regional law schools will be unable to continue to provide or improve innovative, resource intensive, skills based courses which they presently offer.

Those law schools which are not in a favourable market position when deregulation is

introduced will be relegated to a position in which they are unable to charge reasonable course costs, thus cannot gain the required revenue to reinvest in the degree to meet student and industry demands. The increased cost of legal education and skills based education implemented in response to the Pearce Report which is outlined above in Chapter 2, would inhibit newer and regional universities retaining or implementing innovative teaching methods. Inevitably courses which receive less private financial contributions from students will be less able to provide a quality learning environment.

6.3 Desired Outcomes of Deregulation are not achievable

ALSA supports the notion that universities need to be responsive to student needs and that course costs should be reduced. However, deregulation of tuition fees will not further these objectives.

6.3.1 Resource Allocation and Competitive Advantage

The West Report recommended that a loan fund be created to "finance major programs of innovation and structural change, including technological investments associated with such change". The purpose of the loan fund is to assist universities compete in an open market by providing funding for investment in resources and infrastructure with an emphasis on investment which increases efficiency.

However, the loan funds would only be available for a limited time to "assist universities to make the transition to a fully competitive environment". Furthermore, unlike the grant system whereby established institutions have been able to build up infrastructure and resources over the last few decades, the new loan system provides funding to universities which must be repaid, thus placing a further burden on newer and regional universities. The introduction of such a system would only perpetuate the competitive disadvantages which presently exist.

6.3.2 Cost of Legal Education

Deregulation of tuition fees through the implementation of student centred funding will not reduce the cost of legal education as forecast by the West Report. The introduction of deregulated fees for postgraduate and professional training courses (PLT) in 1994, even with the introduction of new players into the market, has not produced a reduction in professional training fees. Rather many law schools view the provision of PLT and postgraduate law courses as a means of producing income to offset the increased cost of legal education.

The West Report suggests that technologies offer significant opportunities to enhance the cost effectiveness of higher education teaching. However, electronic delivery does not necessarily lead to cheaper law courses. The electronically delivered College of Law PLT program exemplifies this claim. The electronic PLT program is in fact more expensive than the traditional print based course offered. Therefore, there is no guarantee that reductions in delivery costs through electronic courses will ensure course costs do not spiral.

Furthermore, ALSA submits that many areas of university teaching will not be suited to delivery in electronic format. For example, the development of so called "lawyering skills" (such as negotiation, advocacy and client interviewing) will always remain a fundamentally face-to-face process. In addition, ALSA submits that some of the benefits derived from a university legal education are intangible social skills. Face-to-face contact should always remain an integral part of the education process, despite the alternative methods available. Thus, although there are significant benefits to be derived from embracing information technology, these benefits should not be overestimated and should not be relied on to reduce the overall cost of delivering legal education.

6.4 Effects of Deregulation

Some of ALSA's major concerns include:

- Profile of the Profession

As discussed above, the increased costs of legal education will be a disincentive for

disadvantaged groups to enter the profession. This will have a profound impact on the profile of the legal profession. As noted in relation to practical legal training in chapter five, there is evidence that deregulated postgraduate fees have reduced access to those courses. Hence deregulation would operate to reduce the diversity legal profession is better able to serve the legal needs of all the community.

With law students bearing an increasingly higher price for their degrees the incentive for graduates to enter community and public law practice is outweighed by the practical necessity of repaying a heavy debt.

- Quality of Legal Education

Deregulation of law providers means that the only regulation of law schools would be the requirement of graduates to complete a minimum of the Priestly eleven subjects required for practice in Australia. For new providers in particular, there is a concern that resources will be not be allocated beyond the essentials, therefore not promoting investment in quality legal education beyond the minimum standard. This will mean increasing numbers of graduates do not undertake skills training or have the opportunity to select from a diverse range of electives. This will have a negative impact on the competency of graduates.

- Diversion of Resources

An intrinsic part of competing in an open market, is considerable investment in advertising and marketing of the product. This will result in resources being diverted from the pursuit of educational objectives.

- Student Access to Legal Education

Public perception and tradition has resulted in law being recognised as a prestigious and high demand degree. Deregulation of tuition fees would invariably lead to increased prices for law courses. This will further limit the affordability of law degrees and, in particular, limit student access to longer combined law degree programs.

Furthermore, deregulation and cost increases will drastically reduce the access of socio-economically disadvantaged groups to sandstone tertiary institutions. This will result in a class system within the higher education sector.

- Regional, Smaller and Newer Law Schools

Deregulation of tuition fees and the introduction of market forces into the higher education sector would reduce the competitiveness of regional, smaller and newer law schools. This is because they possess less resources, are unable to access the profession (traditionally centred in capital cities), and have a smaller catchment area for potential enrolments. In turn, differentiation and innovation in the legal education market would suffer, as newer and regional law schools have historically lead the way in providing diverse and flexible learning.

6.5 Safeguards in the Event of the Introduction of Deregulation of Tuition Fees and Student Centred Funding

As outlined above ALSA is opposed to the deregulation of the Higher Education sector. However, if deregulative measures, such as those recommended by the West Committee are adopted, ALSA submits that a number of safeguards are required in order to maintain and improve diversity amongst the law profession, provide access for lower socio-economic groups and maintain high quality legal education. These safeguards should include:

- The establishment of a national regulatory body;
- Caps on the tuition fees that may be charged by higher education providers;
- The learning account set at a level sufficient for students to complete an undergraduate degree and any required professional qualifications with minimum personal contribution;
- Full disclosure of information about courses and institutions and active dissemination of such information by an independent body; and
- The establishment of a student ombudsman to monitor student' interests within the higher education system.

A number of points are relevant to these safeguards.

6.5.1 National Regulatory Body

In order to ensure that the deregulated higher education sector operates fairly and effectively, a national regulatory body such as the Higher Education Council would need to be established. Such a regulatory body would need to be given wide-ranging powers. This would be an initiative in line with national competition policy and other deregulated industries.

6.5.2 Caps on Tuition Fees

As discussed above, the high tuition fees that may be charged by some institutions in a deregulated higher education sector may be a strong disincentive to participation in higher education by disadvantaged groups, especially if loans for such tuition are provided on a real-interest basis. Every public university introducing full up-front fees in 1998 did so for their law degrees. The reason for this is simple; law courses are high demand and relatively cheap to run, therefore providing universities with significant profits. On this basis, in a deregulated market law is likely to command some of the highest fees of any degree.

Smaller and less established universities will be unable to demand such high fees, thereby creating an underclass of universities offering poor quality courses to an underclass of university students. Given that it is usually necessary for law students in Australia to pay an additional up front fee in order to undertake the professional studies necessary for admission to practice, it is likely that law courses will be strongly and detrimentally affected by the trend which sees lower socio-economic groups not participating in higher education. This will have significant repercussions for diversity amongst the profession.

The West Committee recommended only that preliminary caps be set for tuition fees. If such caps are removed, any control over accessibility of courses will effectively be removed from the government and placed in the hands of higher education institutions.

Caps on tuition fees, if set at levels appropriate to the cost of providing legal education, would prevent these effects occurring. Whilst ALSA maintains that tuition fee caps are unlikely to counter the detrimental effects of deregulation on smaller universities, poorer

students and diversity in the legal profession, caps are a means of redressing some of the access problems which would flow from deregulation.

6.5.3 Learning Account set at a sufficient level

As discussed earlier, the requirement that students provide high contributions to their education, especially if coupled with real-interest loans, is likely to have detrimental effects on participation by disadvantaged groups. These problems are particularly acute for law students as they generally undertake relatively long combined law courses coupled with the requirement for pre-admission training.

This impediment to access may be reduced if the Life Long Learning Accounts recommended by the West Committee were sufficient for students to undertake an undergraduate degree and a professional training course, which is necessary for admission to practice, with only a minimal contribution by students. This would only be possible if caps were set on the level of tuition fees institutions could charge, and the Life Long Learning Account was large enough.

6.5.4 Full Disclosure of Information

Further deregulation of the higher education sector will increase the need for universities to advertise and market themselves to their limited market. This is foreseeable as present competition amongst universities has already resulted in increased marketing.

ALSA supports the recommendation of the West Committee that information about courses and universities should be provided freely to all prospective students. However, university marketing is not the most appropriate means for students to gather information concerning various institutions and to make comparisons between courses at different universities.

Thus, ALSA proposes an independent body, such as the Higher Education Council, should be commissioned to channel accurate information and comparisons to the market.

6.5.5 The Establishment of a Higher Education Ombudsman

ALSA supports the recommendation of the West Committee that an ombudsman be appointed to oversee and monitor students' interests within a deregulated higher education system.

Chapter 7 : Full Fee Paying Domestic Students

Recommendations and Submissions:

7.1) ALSA recommends a deferred HECS scheme as the most appropriate means of financing higher education.

7.2) ALSA remains opposed to up front fees for Australian students.

7.3) ALSA submits that the introduction of up front fees for Australian students has serious implications for access to higher education.

7.4) ALSA submits that the provision of limited numbers of merit and socio-economic based scholarships is insufficient.

7.5) ALSA submits that the introduction of full fee paying domestic students will have an adverse impact on the provision of legal education for those established universities who take in full-fee domestic students as well as the continued viability of smaller and newly established universities.

7.6) ALSA submits that funding for the HECS deferral could be provided for in the Government budget or by the professional bodies who require the practical legal training.

ALSA is firmly opposed to the introduction of full fee paying places for Australian students in publicly funded universities. ALSA maintains that the introduction of up front fees across the public higher education sector will lead to inequitable outcomes by creating severe financial barriers to access. Furthermore, a full-scale fees system in law will negatively effect socio-economic diversity in the composition of law students and, consequently, the profession. ALSA's paramount objection is that the introduction of full up-front fees is contrary to the principle that access to public institutions should be based on merit.

Evidence suggests that students from high socio-economic backgrounds are already over represented in law faculties. At Monash University 78% of new law students graduated from private secondary education. Up front fees can only institutionalise this disparity, especially in light of recent reforms in the abolition of AUSTUDY and introduction of the Common Youth Allowance.

Up front fees will disadvantage the same socio-economic groups that are currently affected by fee paying practical legal training requirements; namely women, indigenous students, students from rural and isolated areas and others who are over represented in lower socio-economic groups.

Both universities and government bodies have acknowledged concerns over up front fees.

The Executive Director of the Australian Vice-Chancellor's Committee, Mr Stuart Hamilton, recognised that:

"were costs of university education to rise much above the present levels—especially if there were also to be a change to the up front payment—many potential students and their families simply could not afford the ...cost of a university education."

Furthermore, the Higher Education Council concedes that up front fees "may bias the total enrolment profile...towards male, urban students from high socio-economic status backgrounds" and that "these changes have immediate implications for equity and

participation...and in the longer term on the profile of professional practitioners".

Diversity within the profession is vital to its legitimacy in the eyes of the community. However, if access is restricted to select groups in accordance with economic status, diversity and therefore legitimacy may be lost.

The introduction of up front fees signifies a move to the American user-pays system, which raises serious equity issues and ignores the benefits of education enjoyed by the community as a whole.

At the Harvard University School of Law, annual fees in 1995 were US\$19,080. Even at 'public' universities, fees are prohibitively high. For instance at the University of California at Berkeley, tuition fees were US\$12,349 in 1995.

7.1 Effect on Small and regional Universities

Newly established, small and regional law faculties will be adversely affected by the introduction of up front fees. Because of perception of industry demand, many students will elect to pay up front fees to attend more established law faculties instead of taking HECS positions at less established universities. On the basis of this perception established universities will charge a premium for the privilege of graduating with their crest. The fact that Melbourne University has only had to drop its TER marginally to gain their required number of full up-front fee paying students, at the expense of the intakes of the three other law degrees in the region exemplifies this claim. This will have the following deleterious effects:

- Some faculties will decrease student intake or face closure. The University of New England for example cannot meet its HECS quota, let alone consider charging fees;
- The decline in regional faculties may deprive regional students of the opportunity to study law, and regional communities may see a decline in legal services;
- There will be a perceived widening gap between the quality of established law faculties and new law faculties.

These are justified community concerns. Commentators in the popular press such as Gavan Moodie have noted that "the large universities in large cities have the courses that have high status, high demand and which attract the high socio-economic status

students whose families are able and willing to pay full tuition fees."

The universities that have elected to accept full fee paying local students are established universities such as the University of Sydney, the University of Melbourne, Monash University and the University of NSW. On the other hand, the universities that have decided not to accept full fee paying local students are regional, small or newly established universities including the University of Tasmania, Wollongong and New England, Flinders, La Trobe, Charles Sturt, James Cook, Southern Cross University and Victoria University of Technology.

7.2 Diversity and expansion of institutions and the need to avoid undue restrictions on innovation and competition within the sector

The introduction of fees has the potential to curtail diversity in the provision of legal education, given that younger law schools have so far demonstrated the greatest potential for innovation and the least potential for market share. Diversity has been regarded as a positive value in legal training at least since the Martin report and the emergence of the newly established law schools.

The introduction of fees encourages universities to become commercially, not educationally focused. Up-front fees change the relationship between the university and the student to one of producer and consumer. Universities will become the provider of qualifications as opposed to the providers of education. In consideration of large fees, students may expect to succeed in their law courses. There exists a serious danger that full fee-paying Australian students will be passed irrespective of whether they have attained the appropriate level of knowledge.

Indeed, the investigative report entitled "Degrees for Sale" in 1995 found evidence that some full fee paying (overseas) students studying at certain Australian universities were passed despite failing to satisfactorily complete the requirements of their course. With sizeable incomes at stake, it was shown that scholastic standards were deliberately lowered in an attempt to encourage larger number of fee-paying students.

7.3 Effect on HECS liable students

As university funding mechanisms currently operate, there is no guarantee that money received from full fee paying law students will be channelled back into law resources and law faculties. Therefore, law schools may be faced with a situation where student numbers are increasing, requiring greater resources, whilst no extra funds are provided to the law school.

7.4 The introduction of fees

As outlined above ALSA does not favour up-front full fee-paying domestic places. However, given that such places have been now been introduced in a number of law faculties, ALSA submits there needs to be legislative safeguards for full-fee paying domestic students.

The most important safeguard is control on price. Currently universities have discretion to set fee levels on the basis of their choice. Fee bases include charging students:

- At the same rate as international students;
- At average institutional cost;
- At average faculty cost;
- At marginal cost of an additional student; and
- At market rate.

ALSA submits that if fees are to be imposed, they should reflect the cost of education, not market demand for that education. Universities must not shift their focus away from being educational institutions, towards being profit-making enterprises.

If full fee-paying students are to remain within public institutions, ALSA also submits that their anonymity must be preserved so as to prevent a clear class-system from emerging in our law schools.